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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,963	12/31/2003	David C. Hastings	5024-00009	9670
7590	05/17/2007			
Joseph D. Kuborn ANDRUS, SCEALES, STARKE & SAWALL Suite 1100 100 East Wisconsin Avenue Milwaukee, WI 53202			EXAMINER HELLER, TAMMIE K	
			ART UNIT 3766	PAPER NUMBER
			MAIL DATE 05/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/749,963	HASTINGS, DAVID C.
	Examiner Tammie Heller	Art Unit 3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 February 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

### **DETAILED ACTION**

1. The amendment filed on February 28, 2007 has been received and considered. By this amendment, claims 1 and 8 are amended and claims 1-19 are now pending in the application.

#### ***Claim Rejections - 35 USC § 112***

2. In view of Applicant's amendment to claim 8, the Examiner is withdrawing the rejection of claim 8 under 35 USC 112, second paragraph, that was made in the previous Office Action.

#### ***Response to Arguments***

3. Applicant's arguments filed February 28, 2007 have been fully considered but they are not persuasive. Applicant argues that Dempsey fails to disclose a processing circuit capable of receiving a notification message and an identification device that is capable of inputting data representative of an identity of a subject. The Examiner respectfully disagrees. As currently claimed, the identification device must be capable of inputting data representative of an identity of a subject from an information source into the processing circuit. Therefore, the identification device could be anything that is capable of transferring data from one source to another, including an antenna or transceiver. As can be seen in Figure 4 of Dempsey, the device includes transceiver 404 which receives information from antenna 112 and inputs that information into processor 400. Additionally, Dempsey discloses at col. 9, ln. 31-42, that a number of devices may be connected to the processor in order to input data. Therefore, Dempsey discloses a processing circuit capable of receiving a notification message and an

identification device that is capable of inputting data representative of an identity of a subject.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Dempsey et al. (U.S. Patent No. 6,057,758), herein Dempsey. Regarding claim 1, Dempsey discloses a system for monitoring a physiological condition of a patient that includes a portable electronic device 100 including a processing circuit 400 and an identification device 404 that may input data representative of an identity of a subject of interest (see Figures 3 and 4). Further, Dempsey discloses at col. 9, ln. 31-42, that a number of devices may be connected to the processor in order to input data.

6. Regarding claim 2, Dempsey discloses that the identification device may be a barcode scanner (see col. 9, ln. 41-43).

7. Regarding claim 3, Dempsey discloses that the identification device may be a radio frequency identification circuit via antenna 112 (see Figure 3).

8. Regarding claim 4, it can be seen from Figure 3 of Dempsey that the identification device is configured to input data representative of an identity of the user.

9. Regarding claim 5, Dempsey discloses that the functions of the portable electronic device are adjusted based on the identity of the user (see Abstract).

10. Regarding claim 6, Dempsey discloses that the display is customized based on the identity of the user (see Abstract).
11. Regarding claim 7, Dempsey discloses that the notification messages received by the portable electronic device are determined based on the identity of the user input (see claim 1).
12. Regarding claim 8, Dempsey discloses that the information received from the identification device may be used to adjust a number of features of the electronic device (see Abstract and claim 1).
13. Regarding claim 9, Dempsey discloses that the device includes an audio signal input device 310, an audio signal output device 312 and a wireless transceiver 112 (see Figure 3).
14. Regarding claim 10, it can be seen from Figures 6-9 of Dempsey that the processing circuit may implement organizer programs.
15. Regarding claim 11, Dempsey discloses communicating via a cellular data transfer protocol (see col. 3, ln. 58-67).
16. Regarding claim 12, it can be seen from Figures 6-9 of Dempsey that the processing circuit may implement organizer programs.
17. Regarding claims 13 and 14, it can be seen from Figure 7 that the organizer program includes a task list function.
18. Regarding claims 15 and 16, Dempsey discloses that the notification message includes physiologic data, specifically an electrocardiogram waveform, acquired from the patient (see col. 8, ln. 4).

19. Regarding claim 17, it can be seen from Figures 1-3 that the invention of Dempsey includes a rugged housing.

20. Regarding claim 18, Dempsey discloses that the housing may be for example, six inches tall, four inches wide, and one-half inch deep (see col. 7, ln. 22-23). Therefore, the housing of Dempsey is disclosed to have a volume of no more than 35 cubic inches.

21. Regarding claim 19, as the device of Dempsey is designed and configured to be utilized within the setting of a hospital, the Examiner takes the position that it is inherent that the housing be configured to be free of bacterial growth in order to maintain the sanitary conditions necessary within a hospital setting.

### ***Conclusion***

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

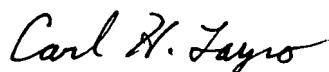
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tammie Heller whose telephone number is 571-272-1986. The examiner can normally be reached on Monday through Friday from 7am until 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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